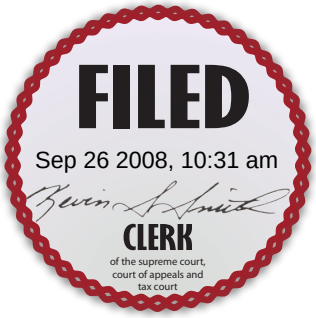

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IN THE
COURT OF APPEALS OF INDIANA

DAVID FARRELL,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 79A04-0712-CR-746
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE TIPPECANOE SUPERIOR COURT
The Honorable Thomas H. Busch, Judge
Cause No.79D02-0608-FB-59

September 26, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant-Defendant David Farrell appeals following his convictions for ten counts of Theft as a Class D felony,[1] nine counts of Forgery as a Class C felony,[2] one count of Receiving Stolen Property as a Class D felony,[3] and the finding that he was a habitual offender. On appeal, Farrell contends that the trial court abused its discretion in admitting certain evidence at trial and that his sentence is inappropriate. We affirm.

FACTS AND PROCEDURAL HISTORY

I. Facts Relating to Events Occurring on August 8, 2006

On August 8, 2006, Joseph Schrader was working at his jewelry shop when he realized that certain items, including a necklace with a gold coin pendant and a men's diamond ring, were missing. The necklace was eventually recovered from Ram-Z Exchange, a pawn shop located in Lafayette. Randolph Ramsey, the owner of Ram-Z Exchange, identified Farrell as the seller of the necklace. Records retained by Ram-Z Exchange also indicated that Farrell was the seller of the necklace. The men's ring was eventually recovered from the Pawn Store in Crawfordsville. Records retained by the Pawn Store identified Farrell as the seller of the men's ring. Both the necklace and the ring belonged to Jay MacDowell, who had taken the items to Schrader's jewelry shop for repairs.

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[1] Ind. Code § 35-43-4-2 (2006).

[2] Ind. Code § 35-43-5-2 (2006).

[3] Ind. Code § 35-43-4-2(b) (2006).

II. Facts Relating to Events Occurring on August 10, 2006

On the morning of August 10, 2006, Patrick Circle's wife informed him that as she was leaving for work, she noticed that their garage door was open. Circle later realized that the contents of his vehicle, which was parked in the alley just behind the garage, appeared to have been disturbed. Circle discovered that his wallet and its contents, including his debit and Hilton Honors credit cards, were missing. Circle called his bank and was told that there had been several unauthorized transactions on his debit card.

Store records established that Circle's debit card was used at two different Village Pantry convenience stores on August 10, 2006, at 5:15 a.m., 5:20 a.m., 7:12 a.m., and 7:50 a.m. for transactions totaling $355.64. Circle had not authorized any of these transactions, nor did he sign any of the debit card receipts. Cashiers from both stores identified Farrell both in a photo array shortly after the charges were made and in court as the person who signed the debit card receipts. Circle's Hilton Honors credit card was recovered from Farrell's wallet following Farrell's arrest.

III. Facts Relating to Events Occurring on August 13, 2006

On August 13, 2006, Jonathan Blye woke at 5:30 a.m. and discovered that his pit bull-terrier puppy was missing from its cage. After a search of his house for the puppy, Blye notified the police.[4] Blye discovered that items had been moved on the counter near the puppy's cage, including his wife's purse, and that his wife's wallet, containing his wife's identification, their children's social security cards, and Blye's debit card, was missing.

[4] Blye's puppy was never found.

Store records established that Blye's debit card was used at a Circle K convenience store in Lafayette on August 13, 2006, at 2:18 a.m., 2:22 a.m., 2:23 a.m., 2:27 a.m., and 2:56 a.m. for transactions totaling $696.16. Blye had not authorized any of these transactions. The Circle K's video security system recorded video of the transactions in question. The video, which was subsequently provided to law enforcement, indicated that Farrell was the purchaser for each of the five transactions. Receipts from three of these transactions were recovered from Farrell's wallet.

IV. Additional Facts and Procedural History

Based on the facts relating to events occurring on August 8, 2006, the State charged Farrell with receiving stolen property, a Class D felony. Based on the facts relating to events occurring on August 10, 2006, the State charged Farrell with four counts of forgery as a Class C felony and four counts of theft as a Class D felony. Based on the facts relating to events occurring on August 13, 2006, the State charged Farrell with burglary as a Class A felony, five counts of forgery as a Class C felony and six counts of theft as a Class D felony.

Prior to trial, Farrell filed four motions to suppress, all relating to his arrest. The basis of these motions involved an illegal search incident to arrest, a statement as a result of an illegal arrest, invalid consent to search, and Miranda violations. On July 23, 2007, the trial court conducted a hearing on Farrell's motions to suppress. At this hearing, the arresting officer, Officer Michael Humphrey, discussed the circumstances surrounding Farrell's August 14, 2006 arrest. Officer Humphrey stated the following:

> Initially there was a 911 call and it was put out over our radio and computer system. At the time I was pulling up to headquarters, was just right on the

street. The call was from the Village Pantry at 9th and South Street and the initial information stated that there was some sort of a struggle overheard. There was a mention of a handgun involved and then the---there was an open line meaning that the dispatcher could overhear information but no one was---she was not able to get anybody to come back on the phone. I immediately went---I'm right around the corner at 6th and South, drive up, park on the 700 block or near the 700 block, get out and then start approaching and then due to the nature of the call or the mention of a handgun parked a considerable distance away and then started approaching the area on foot.

* * *

As I got about mid-block, I saw two males, a black male and a white male come from a front yard area. I was unable to see if they came from a residence or if they were just cutting through the yard and they were walking westbound and they came out of the yard onto the sidewalk and started walking westbound towards me.

* * *

They started to pass me on the---it would be---they were walking closest to the street on the sidewalk so they're passing on my left side and as they passed I just said something to the effect that, hey, did you hear any type of argument or were you involved in an argument at the Village Pantry?

* * *

They claimed they didn't have any knowledge of any type of argument or hadn't heard anything.

* * *

I asked if they had any ID or had any ID on them. They said no. and then I asked them to verbally identify themselves.

* * *

Both verbally identified themselves. Mr. Farrell said he was David Farrell, he gave a date of birth, and the other subject, Peters, identified himself, said he didn't have any ID. I think I asked have you ever had an ID or what state it's through and he told me Illinois. Initially, I don't remember if it was Farrell or Peters, one of them may have said, you know, why would he do that and I just

> said, hey, you know, we got called to this argument. The two of you are walking in the area. Just identify, if there's nothing there then that's the end of it and you're on your way.
>
> * * *
>
> Based on the fact I recognized [Farrell] and the possibility of the warrant I detained him in handcuffs. I also detained Mr. Peters in handcuffs. I did a quick weapons pat down on both, nothing was found. I had them have a seat on the grass embankment, the grass area there by the sidewalk, and waited---I asked dispatch to confirm the warrant.
>
> * * *
>
> Dispatch confirmed that Mr. Farrell did have an active warrant and that was it.

Tr. p. 12-17. During a search of Farrell's wallet subsequent to his arrest, Officer Humphrey recovered Farrell's identification card, social security card, Circle's Hilton Honors credit card, and various receipts.

In written findings, the trial court denied Farrell's motions to suppress, concluding that the encounter began consensually, and that it was permissible for Officer Humphrey to ask for identification. The trial court found that Officer Humphrey did not display his weapon, speak in a threatening manner, touch Farrell, or otherwise coerce Farrell at any time during the encounter prior to his arrest. The trial court found that the search incident to Farrell's arrest was permissible under both the Federal and Indiana Constitutions.

A jury trial was conducted on August 21-22, 2007. Following the conclusion of trial, the jury acquitted Farrell on the burglary charge but found him guilty of all remaining charges. Farrell waived his right to a jury trial on the habitual offender allegation, and the trial court found Farrell to be a habitual offender. At sentencing, the trial court imposed an

aggregate thirty-five-year sentence. Farrell now appeals.

DISCUSSION AND DECISION

I. Admission of Evidence

Farrell contends that the trial court abused its discretion in admitting certain evidence at trial. In challenging the admission of evidence, Farrell claims that the trial court should have granted his motions to suppress the evidence collected as a result of his August 14, 2006 arrest, namely the duplicate copies of receipts from the convenience stores and pawn shops and Circle's Hilton's Honors credit card. We observe, however, that because we are reviewing Farrell's claim following his trial rather than in an interlocutory appeal, the issue presented is more appropriately framed as whether the trial court abused its discretion by admitting the evidence at trial. *Bently v. State*, 846 N.E.2d 300, 304 (Ind. Ct. App. 2006), *trans. denied*.

It is well-established that a trial court has broad discretion in ruling on the admissibility of evidence. *Id.* We will affirm the judgment of the trial court if it is sustainable on any legal ground apparent in the record. *Richardson v. State*, 848 N.E.2d 1097, 1101 (Ind. Ct. App. 2006), *trans. denied*. Accordingly, we will reverse a trial court's ruling on the admissibility of evidence only when the trial court has abused its discretion. *Bently*, 846 N.E.2d at 304. An abuse of discretion occurs if the decision is clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007).

It is well-established that given that the trial court is afforded broad discretion in ruling on the admissibility of evidence, an error in admission of evidence will not result in reversal of a conviction if the error is harmless. *Edmond v. State*, 790 N.E.2d 141, 144 (Ind. Ct. App. 2003), *trans. denied*. An error will be viewed as harmless if the probable impact of the evidence upon the jury is sufficiently minor so as not to affect the party's substantial rights. *Id*. at 144-45. Further, erroneously admitted evidence which is cumulative of other, properly admitted evidence does not establish the prejudice required for reversal. *Isom v. State*, 585 N.E.2d 1347, 1351 (Ind. Ct. App. 1992).

Regardless of the admissibility of the challenged evidence, at trial, the State introduced a substantial amount of independent evidence, unrelated to the alleged illegal search, to prove that Farrell committed each of the crimes in question. With respect to the events occurring on August 8, 2006, Joseph Schrader testified that certain items, including a necklace with a gold coin pendant and a men's diamond ring, belonging to Jay MacDowell, had been stolen from his jewelry shop. After the items were stolen from Schrader's store, MacDowell contacted area pawn shops in the hopes of recovering his missing items. MacDowell's necklace was later recovered from the Ram-Z Exchange, and the owner of Ram-Z Exchange identified Farrell as the seller. MacDowell's ring was later recovered from the Pawn Store, and records retained by the Pawn Store identified Farrell as the seller. With respect to the events occurring on August 10, 2006, cashiers from two different Village Pantry convenience stores identified Farrell, both in a photo array and in court, as the person who signed the receipts for purchases made with Circle's debit card. Circle testified that he

did not authorize Farrell to make any purchases with his debit card. With respect to the events occurring on August 13, 2006, store records establish that Blye's debit card was used five times between 2:00 a.m. and 3:00 a.m. at a Circle K convenience store. The store's video security system establishes that Farrell was the purchaser for each of the five transactions. In light of the independent evidence presented at trial establishing that Farrell committed each of the crimes in question, we conclude that even if the trial court had improperly admitted the duplicate copies of various receipts recovered as a result of Farrell's arrest, any such evidence would merely be cumulative of other properly admitted evidence, and thus would not give rise to a level of prejudice sufficient to require reversal. *See Isom*, 585 N.E.2d at 1351.

In light of our finding that any prejudice allegedly suffered by Farrell was harmless because sufficient independent evidence existed to support each of Farrell's convictions, we need not address the merits of the propriety of the circumstances surrounding Farrell's arrest.

II. Appropriateness of Sentence

Farrell also contends that his aggregate twenty-three-year sentence is inappropriate in light of the nature of his offense and his character.[5] Indiana Appellate Rule 7(B) provides that appellate courts "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." The burden lies with the defendant to persuade us that his or her sentence is inappropriate. *Anglemyer v. State*, 868 N.E.2d 482, 494 (Ind. 2007) (citing *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006)).

On appeal, Farrell's challenge to his twenty-three-year aggregate sentence is premised upon his claim that the trial court imposed the maximum sentence allowed by law. We, however, are unconvinced that Farrell received the maximum sentence allowed by law. In *Smith v. State*, 770 N.E.2d 290, 294 (Ind. 2002), the Indiana Supreme Court established that when a defendant committed multiple forgeries, and each forgery occurred at a separate time, separate place, and for a separate amount of money, such acts could constitute multiple episodes of criminal conduct under Indiana Code section 35-50-1-2. Application of the Supreme Court's decision in *Smith* to the instant matter suggests that, at the very least, Farrell's actions with regard to his unauthorized use of Circle's debit card nearly two hours apart at two different Village Pantry locations could create separate episodes of criminal

[5] In addition to Farrell's aggregate twenty-three-year sentence, the trial court imposed a twelve-year sentence enhancement as a result of Farrell's status as a habitual offender.

conduct, and would therefore allow for the possibility of an additional consecutive ten-year term.

Notwithstanding Farrell's claim that he received the maximum sentence allowed by law, we conclude that Farrell's sentence is appropriate in light of the nature of his offenses and his character. The nature of Farrell's offenses is such that multiple victims suffered varying degrees of loss as a result of Farrell's actions. Farrell took jewelry belonging to MacDowell that had been entrusted to Schrader's jewelry shop for repairs and sold it to pawn shops. Farrell took Circle's wallet and used his debit card, without receiving authorization, to complete four transactions totaling $355.64. Farrell also took Blye's wife's wallet and, without receiving authorization, used the Blyes' debit card to complete five transactions totaling $696.16. As a result of Farrell's actions, each of his victims suffered, at the very least, inconvenience. MacDowell had to use a substantial portion of his time to track down his belongings at area pawn shops. Schrader had to employ a substantial sum of his personal funds to restore his jewelry shop's long-standing good reputation. Circle and Blye had to dedicate a substantial portion of time to restore their financial safety and stability. Further, as a result of Farrell's actions, the Blye family suffered numerous financial hardships, lost the feeling of safe haven in their own home, ultimately forcing the family to move, and they never recovered their puppy. We believe that Farrell's actions, for which he was convicted of twenty separate criminal offenses, demonstrate that Farrell had little regard for any of his victims. Farrell's actions were not isolated incidents of criminal activity, but demonstrate

ongoing criminal conduct which Farrell claims was necessary to support his substantial drug habit.

As for Farrell's character, he has a substantial criminal history, including a conviction for armed robbery, and was on probation at the time he committed the instant offenses. Farrell also has a substantial history of drug use, including periods of daily use of cocaine, methamphetamine, and marijuana. Farrell admits that he has been imprisoned for the majority of his adult life, but claims that he is committed to changing his life by giving up the life of crime and drugs. While we applaud Farrell for his claimed commitment to turning his life around, Farrell has failed to persuade us that his claimed commitment to changing his life, without more, renders his sentence inappropriate.

The judgment of the trial court is affirmed.

RILEY, J., and BAILEY, J., concur.